

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 56 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AHER VIRA HAJA BARAD

Versus

AHER BAI PUNIBEN VIRA

Appearance:

MR AJ SHASTRI for Petitioner

NOTICE UNSERVED for Respondent No. 1

MS VALIKARIMWALA APP for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/11/98

ORAL JUDGEMENT

Heard learned advocate Mr. Shastri for the applicant and learned APP Ms. Valikarimwala for the respondent no. 3-State. The other respondents though served are not represented before me.

2. It appears that the respondent no. 1 is the wife of the applicant herein and the respondent no. 2 is the minor daughter of the applicant and the respondent no. 1. The respondent no. 1 is estranged from her husband the applicant herein and has been residing separately. She filed an application being Criminal Misc. Application No. 40 of 1990 in the Court of Judicial Magistrate, First Class, Veraval for maintenance under Sec. 125 CrPC. The said application was allowed and the applicant was ordered to pay monthly maintenance of Rs. 150/- and Rs. 75/- to the respondents nos. 1 & 2 herein respectively. Feeling aggrieved, the said respondents preferred Criminal Revision Application No. 18 of 1991 before the Court of Addl. Sessions Judge, Junagadh which came to be allowed on 30th July, 1993. The monthly maintenance payable to the respondent nos. 1 & 2 was enhanced to Rs. 400/- and 150/- respectively. Feeling aggrieved, the applicant has preferred the present Criminal Revision Application under Section 397 read with Section 401 CrPC.

3. Mr. Shastri has submitted that the applicant is a labourer and was earning Rs. 500/- per month by way of wages. He having no other income, the maintenance awarded to the respondents nos. 1 & 2 herein is excessive and there is no reason why it should have been enhanced by the learned Addl. Sessions Judge, Junagadh. Mr. Shastri has contended that though the respondent no. 1 had contended that the applicant was earning around Rs. 15,000/- every month and he had a share in the agricultural land admeasuring 30 vighas, there was absolutely no evidence to support her claim and in absence of such evidence, the learned Addl. Sessions Judge ought not to have enhanced the maintenance awarded to the respondent nos. 1 & 2.

4. Be that as it may, it does appear that the applicant was serving as a labourer in a Sugar Factory and was also serving in some Soda Ash factory. Further, he had a share in the family land and out of the said land a piece of land admeasuring 8 vighas had come to his share. Thus, it is apparent that besides his wages earned from sugar factory and soda ash factory, the applicant was earning some agricultural income from the agricultural lands. In that view of the matter, the maintenance awarded to the respondent nos. 1 & 2 does not call for an alteration, that too after more than 5 years from the date of the order of the learned Addl. Sessions Judge, Junagadh.

5. Application is, therefore, dismissed. Rule is

discharged. There shall be no order as to costs.

Prakash*